

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
EDWARD AND JEAN MEIXSELL	:	ORDER
	:	DTA NO. 808311
for Revision of a Determination or for Refund	:	
of Real Property Transfer Gains Tax under	:	
Article 31-B of the Tax Law for the Year 1987.	:	

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Petitioners, Edward and Jean Meixsell, brought a motion, dated November 4, 1991, requesting:

1. an Order pursuant to 20 NYCRR 3000.6 precluding the Division of Taxation from giving evidence at hearing of items of which particulars demanded in a Bill of Particulars have not been delivered; and
2. an Order pursuant to 20 NYCRR 3000.5 directing the Division of Taxation to produce documents and permit petitioners, by their attorneys, to inspect, copy, and/or photograph all books, papers, records or documents relating to the instant proceeding as set forth in the affidavit of Mr. Mainello in support of the motion.

Petitioners appeared by Mark A. Mainello, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Paul A. Lefebvre, Esq., of counsel). Based upon Mr. Mainello's affidavit and reply affidavit in support of the motion and Mr. Lefebvre's affidavit in opposition thereto and all of the pleadings and documents submitted, the following orders are rendered.

FINDINGS OF FACT

The Division of Taxation ("Division") issued to petitioners, Edward Meixsell and Jean A. Meixsell, a Notice of Determination of realproperty transfer gains tax, dated May 26, 1989, in the amount of \$165,000.00 plus penalty and interest.

On June 15, 1990, petitioners filed a petition with the the Division of Tax Appeals for revision of the determination. The petition included 22 numbered paragraphs setting forth

petitioners' allegations of error by the Commissioner of Taxation and Finance and a statement of facts to be proven at hearing. Attached to the petition were, among other documents: (1) a conciliation order sustaining the statutory notice; (2) a two-page letter dated February 6, 1990 signed by the conferee who issued the conciliation order which set forth his reasons for sustaining the statutory notice; (3) a Statement of Proposed Audit Adjustment, dated June 7, 1988, issued to Jean A. Meixsell, with an attachment showing the Division's calculation of tax, penalty and interest due; and (4) a letter dated July 21, 1988, signed by Richard A. Ferriolo, Mortgage Tax Technician III, by which the Division of Taxation ("Division") confirmed the assertion of tax as shown in the Statement of Proposed Audit Adjustment.

The Statement of Proposed Audit Adjustment was issued based on documentation submitted by petitioners. It contains the following explanation:

"Section 1440.7 of the Tax Law provides in part that the transfer of real property will include partial or successive transfers. Sections 590.42 and 590.43 of the Gains Tax Regulations provide that the separate deed transfers of contiguous or adjacent properties is, for the purposes of the Gains Tax, a single transfer of real property. To determine the application of the one million dollar exemption, the consideration for each transfer is to be aggregated. However, if the transferor can establish that the only correlation between the properties is the contiguity or adjacency itself, and that the properties were not used for a common or related purpose, the consideration would not be aggregated."

The gains tax, penalty and interest was calculated on the Statement of Proposed Audit Adjustment as follows:

	Parcel 1	Parcel 2		
Consideration:			\$850,000.00	\$800,000.00
Brokerage: (No Documentation)	-0-	-0-		
Original Purchase Price: (No Documentation)	-0-	-0-		
Gain Subject to Tax			850,000.00	800,000.00
Gains Tax Rate	<u>X</u>	<u>X</u>	<u>10%</u>	<u>10%</u>
Gains Tax Due			85,000.00	80,000.00
Penalty & Penalty Interest	<u>X</u>	<u>X</u>	<u>35%</u>	<u>35%</u>
Penalty & Penalty Interest Due			29,750.00	28,000.00
Interest: 5/12/87 - 7/1/88			<u>8,002.81</u>	<u>7,532.07</u>
Total Tax; Penalty & Penalty Interest; Interest			122,752.81	115,532.07

The petition sets forth the following facts. The subject parcels (Parcel 1 and Parcel 2) were separately purchased by Edward Meixsell in 1961 and 1962 respectively. Parcel 1 was transferred by Mr. Meixsell to Dentrac Shopping Plaza, Inc. ("Dentrac"). Parcel 2, which was

adjacent to Parcel 1, was transferred to Scott Plaza, Inc. ("Scott"). In contemplation of the sale of Parcel 1, Dentrac's assets were liquidated and ownership of Parcel 1 was transferred to Jean A. Meixsell. In or about 1986, Scott's assets were liquidated and ownership of Parcel 2 was transferred to Edward A. Meixsell. Parcel 2 was transferred to Seventh Street Associates on May 21, 1987 and Parcel 1 was transferred to Lake Avenue Associates in June 1987.

On May 15, 1987 and May 26, 1987, respectively, real property transfer gains tax questionnaires and supporting documentation concerning the transfers of Parcel 1 and Parcel 2 were submitted to the Division. On the questionnaires an exemption from gains tax was claimed on the basis that the consideration was less than one million dollars. By letter dated April 12, 1988, the Division requested the following additional information: (1) a copy of the original acquisition deed for each property; (2) a copy of the original acquisition closing statement for each property; and (3) the official tax map designation and a full description of each property.

A conciliation conference was held on January 3, 1990, where petitioners were represented by counsel. The conferee sustained the statutory notice, and in a letter to petitioners' representative, he set forth the factual and legal grounds for his determination.

On or about December 18, 1990, the Division served an answer to the petition. By its answer, the Division denied categorically or denied knowledge or information sufficient to form a belief as to each of the allegations found in the petition, with the exception of the first sentence of paragraph 9, the first sentence of paragraph 10 and the second sentence of paragraph 22, which were admitted, and paragraph 20 and the first sentence of paragraph 22, which were neither admitted nor denied. The Division's answer also set forth 19 affirmative statements (numbered paragraphs 25 - 49) detailing the facts it relies on in support of its determination of tax due.

On February 11, 1991, petitioners served the Division with a Demand for a Verified Bill of Particulars. By letter dated June 5, 1991, petitioners renewed their demand, and by letter dated September 24, 1991, petitioners informed the Division that they were not abandoning

their demand despite the Division's offer to permit petitioners' attorney to review "certain documents" in the possession of the Division.

On September 16, 1991, the Division of Tax Appeals issued a Notice of Hearing, informing petitioners that a hearing was scheduled for October 21, 1991 at 9:15 A.M.

On September 25, 1991, petitioners' representative met with the Division's representative at the offices of the Division. At that meeting, the Division's attorney reviewed the Division's audit file with petitioners' attorney. Petitioners advised the Division that they were not abandoning their demand for a bill of particulars.

By letter dated September 30, 1991, petitioners requested that the Division provide them with a wide range of documents (e.g., "Copies of all records, documents, correspondence, and affidavits concerning Scott Plaza, Inc."). In a letter dated October 3, 1991, petitioners supplemented the request for documentation "by requesting from the Department of Taxation and Finance appropriate discovery/documentation, including all evidence which will be produced at the hearing by the Department of Taxation and Finance." Furthermore, petitioners stated that they would prefer to resolve the demands informally and towards that end stated that they would withhold motions relative to the demands for 30 days.

On October 4, 1991 the Division served a bill of particulars upon petitioners. By letter of the same date, the Division informed petitioners that it would not comply with what it considered to be improper discovery requests.

At petitioners' request, the hearing scheduled for October 21, 1991 was adjourned to allow petitioners an opportunity to bring the instant motions.

Petitioners maintain that items 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, and 23 of the Division's Bill of Particulars are non-responsive and defective. Petitioners complain that the bill is generally vague and evasive.

Items 4, 5, and 8 of the demand sought particular dates upon which petitioners transferred property or acted as officers or shareholders of Dentrac and Scott. Items 6 and 9 of the demand sought information with regard to petitioners' shares of stock ownership in Dentrac

and Scott. Items 7 and 10 of the demand asked the Division to particularize in sufficient detail the claim that petitioners jointly shared in the benefits derived from Dentrac and Scott. Item 15 of the demand asked the Division to provide particulars of certain allegations concerning a contract for sale of land entered into on November 11, 1986, especially the parties to the contract, the date of the contract and the description of the parcels as set forth in the contract.

In items 4, 5, 6, 7, 8, 9, 10 and 15 the Division responded, in whole or in part, by stating that the "information is particularly within the knowledge of the petitioners and is not presently known by the Division".

With regard to items 5, 6, 8, and 9, the Division stated that affirmative statements made in the answer were based, at least in part, on corporation franchise tax and corporate income tax returns filed by Scott and Dentrac.

Item 11 asks the Division to "[s]tate...the basis, manner and authority relied upon" for its statement that "petitioners are considered to be one transferor under the gains tax law" (Division's Answer, ¶ 35). In response, the Division stated: "See Article 31-B of the Tax Law, especially sections 1440.4, 1440.7 and 1448.1."

Item 13 asks the Division whether the considerations were aggregated based upon a plan or agreement, and if so, to state "the transferor's intent and the actions manifesting such intent including the facts and circumstances thereof". The Division responded:

"It is the Division's position that the transfers at issue are, by definition, a single transfer. The Division reserves the right to assert that aggregation is proper pending the outcome of the hearing."

Item 14 requests that the Division define the terms "beneficial interest or control" and "de facto partnership" as used in the answer. The Division responded that petitioners are husband and wife and report income on joint returns.

Items 17 and 18 of the demand request information with regard to contracts for sale of property referred to in the answer. Item 19 requests that the Division particularize those facts relied on for the Division's determination that Lake Avenue Associates and Seventh Avenue Associates are beneficially owned by the same individuals and the names of the individual

owners of each entity. In each case, the Division responded with information derived from its review of contracts, apparently submitted to the Division by petitioners.

Item 20 asked the Division to provide the basis for its allegation that it was petitioners' intent to sell the properties subject to a plan. The Division referred petitioners to item 13 of its bill (see Finding of Fact "19").

Item 23 asked the Division to set forth its calculation of penalty and interest including the "amounts of same and the basis upon which they are made." The Division referred petitioners to the Statement of Proposed Audit Changes.

By its motion for a discovery order, the petitioners requested the following items:

"a.) Copies of all Statements of intent to dissolve, Waiver of notice of joint special meeting of stockholders and directors, and Minutes of joint special meetings of stockholders and directors, for both Dentrac Shopping Plaza, Inc. and Scott Plaza, Inc.

b.) All corporate franchise tax reports (CT-3) with all riders, including U.S. Corporation income tax returns (Form 1120) for the periods 1971 through 1988, including the periods 1979, 1986, 1987 and 1988 for both Dentrac Shopping Plaza, Inc. and Scott Plaza, Inc.

c.) Copies of all personal income tax returns, State and Federal, for EDWARD and JEAN A. MEIXSELL, for the years 1985 through 1988.

d.) Copies of all contracts pertaining to the two (2) parcels in question, which had been entered into, including but not limited to those entered into prior to November 11, 1986.

e.) Copies of new and/or revised contracts to sell the two (2) parcels in question, including any contracts entered into between EDWARD MEIXSELL and Seventh Street Associates, as well as any contracts entered into between JEAN A. MEIXSELL and Lake Avenue Associates. In addition to the contracts, all addenda should be provided.

f.) Copies of all transferor questionnaires, regarding the two (2) parcels in question, signed by EDWARD MEIXSELL as transferor, and/or signed by JEAN A. MEIXSELL as transferor.

g.) Copies of all transferee questionnaires involving the two (2) parcels in question, which were signed by Yvonne Shahmoon (approximate), and/or signed by anyone else on behalf of Seventh Street Associates and/or Lake Avenue Associates.

h.) Copies of all transferee questionnaires pertaining to the two (2) parcels in question, submitted on behalf of Seventh Street Associates and/or Lake Avenue Associates.

i.) Copies of any contracts for sale pertaining to either of the two (2) properties in question.

j.) A copy of a notice of determination allegedly sent to Petitioners on or about May 25, 1989, #L-000771420-7.<sup>1</sup>

k.) Copies of all records, documents, correspondence and affidavits pertaining to the following: EDWARD MEIXSELL, JEAN A. MEIXSELL, Dentrac Shopping Plaza, Inc., Scott Plaza, Inc., Lake Avenue Associates, Seventh Street Associates, Yvonne Shahmoon (approximate), and the law firm Bloom, Ross, Weisler, Bergstein, Golden & Weingold.

l.) Copies of corporate minutes, resolutions, documents, articles and/or certificates of dissolution, together with all other corporate documents pertaining to Dentrac Shopping Plaza, Inc. and pertaining to Scott Plaza, Inc.

m.) Copies of all gains tax affidavits, affidavits, tentative assessments and returns, notices, together with any other gains tax determinations, pertaining to each of the following individuals or entities:

EDWARD MEIXSELL,  
JEAN A. MEIXSELL,  
Dentrac Shopping Plaza, Inc.,  
Scott Plaza, Inc.,  
Lake Avenue Associates  
Seventh Street Associates,  
Yvonne Shahmoon (approximate),  
Law Firm of Bloom, Ross, Weisler, Bergstein,  
Golden & Weingold.

n.) In addition to the foregoing materials, Petitioners request that the Department produce copies of all items, records, materials and documentation which will comprise evidence to be produced at the hearing by the Department."

The original return date of petitioners' motion was December 4, 1991. Pursuant to 20 NYCRR 3000.5, the answering affidavit to this motion was to be filed no later than 10 days prior to the return date or November 25, 1991 (November 24, 1991 falling on a Sunday). At the Division's request, the return date was moved to December 6, 1991, requiring filing of the Division's affidavit by November 26, 1991. The affidavit was received by the Division of Tax Appeals on November 29, 1991 in an envelope bearing a United States postmark of November 27, 1991. By its reply affidavit, petitioners move for an order finding the Division in default on

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A copy of the notice was attached as an exhibit to the affidavit of Mr. Lefebvre.

the motion and request that its answering papers not be considered.

Each party submitted letters containing arguments of law after the return date of the motion without seeking or receiving permission to do so. The contents of those letters were not considered in arriving at the determinations made below.

### CONCLUSIONS OF LAW

A. The Division of Tax Appeals is responsible "for providing the public with a just system of resolving controversies with [the Division of Taxation] and to ensure that the elements of due process are present with regard to such resolution of controversies" (Tax Law § 2000). Practice before the Division of Tax Appeals is governed by the Tax Appeals Tribunal Rules of Practice and Procedure (20 NYCRR part 3000). Section 3000.0(a) provides:

"The rules of practice and procedure contained in this Part are intended to provide the public with a clear, uniform, rapid, inexpensive and just system of resolving controversies with the Division of Taxation.... In this Part, the Tax Appeals Tribunal has set forth rules of practice and procedure to afford the public both due process of law and the legal tools necessary to facilitate the rapid resolution of controversies while at the same time avoiding undue formality and complexity."

Section 3000.0(c) provides:

"This Part shall be liberally construed to secure the just, speedy and inexpensive determination of every controversy and shall not be construed to limit or repeal rights afforded or requirements imposed by statute or otherwise."

B. The Tax Appeals Tribunal has held that the time period imposed upon the Division of Taxation by 20 NYCRR 3000.4(a) for a responsive pleading is directory rather than mandatory (see, Matter of Donald Maggin, Tax Appeals Tribunal, citing Matter of Geary v. Commissioner of Motor Vehicles, 92 AD2d 38, 459 NYS2d 494, aff'd 59 NY2d 950, 466 NYS2d 304). It further held that the Division's failure to comply with the time limitations of that section will not result in dismissal of the agency's action in the absence of a showing of substantial prejudice as a result of the delay (id.). The principles governing the filing of a responsive pleading would seem equally applicable to the time limitations governing the filing of answering affidavits to a motion. Here, the Division's affidavit was filed one day late and nine days before the return date of the motion. Petitioners have not alleged prejudice as a result of the Division's late filing.



Consequently, the Division's answering affidavit has been received and considered.

C. Proceedings are commenced in the Division of Tax Appeals by the filing of a petition (Tax Law § 2008). The Division of Taxation is required, by regulation, to file an answer to the petition. Section 3000.4 of the Rules of Practice and Procedure of the Tax Appeals Tribunal governs the form and content of that answer. It states:

"(2) The answer as drawn shall contain numbered paragraphs corresponding to the petition and shall fully and completely advise the petitioner and the division of tax appeals of the defense. It shall contain:

(i) a specific admission or denial of each material allegation of fact contained in the petition;

(ii) a statement of any additional facts to be proven by the division of taxation either as a defense, or for affirmative relief, or to sustain any issue raised in the petition upon which the division of taxation has the burden of proof; and

(iii) the relief sought by the division of taxation."

Section 3000.6 of the Rules of Practice and Procedure provides for the use of a bill of particulars in proceedings conducted by the Division of Tax Appeals. It provides:

"(a) Bills of particulars. (1) After all pleadings have been served, a party may wish the adverse party to supply further details of the allegations in a pleading to prevent surprise at the hearing and to limit the scope of the proof. For this purpose, a party may serve written notice on the adverse party demanding a bill of particulars within 30 days from the date on which the last pleading was served.

(2) The written demand for a bill of particulars must state the items concerning which such particulars are desired. If the party upon whom such demand is served is unwilling to give such particulars, he or she may, in writing to the supervising administrative law judge, make a motion to the tribunal to vacate or modify such demand within 20 days after receipt thereof. The motion to vacate or modify should be supported by papers which specify clearly the objections and the grounds for objection. If no such motion is made, the bill of particulars demanded shall be served within 30 days after the demand, unless the administrative law judge designated by the tribunal shall direct otherwise.

(3) In the event a party fails to furnish a bill of particulars, the administrative law judge designated by the tribunal may, upon notice, preclude the party from giving evidence at the hearing of items of which particulars have not been delivered.

(4) Where a bill of particulars is regarded as defective by the party upon whom it is served, the administrative law judge designated by the tribunal may, upon notice, make an order of preclusion or direct the service of a further bill. In the absence of special circumstances, a motion for such relief shall be made within 30 days after the receipt of the bill claimed to be insufficient.

(5) A preclusion order may provide that it will be effective unless a proper bill is served within a specified time."

D. In this case, the Division filed an answer which fully complied with the mandates of section 3000.4, setting forth those facts it relied on in coming to its determination of tax due; however, on this motion, the Division takes the position that it was required only to provide an admission or denial to each material allegation of fact contained in the petition and that it was not required to plead additional facts. Accordingly, it asks permission to substitute an amended answer, consisting only of admissions and denials, for the original answer.

By its position, the Division seeks to construe the word "defense" as used in section 3000.4 to mean only those matters upon which, by statute, the Division carries the burden of proof. In order to fulfill the mandate of section 3000.0 it is necessary to construe the term "defense" much more broadly so as to require the Division to provide a statement of all facts which it intends to prove at hearing to overcome the petitioner's allegations of error by the Commissioner. These are precisely the kinds of facts which were pleaded by the Division in its answer to the subject petition. The Division's motion to amend its answer by substitution is denied.

E. Petitioners seek an order of preclusion on the grounds that the Division's bill of particulars is defective and fails to adequately respond to the demand. The Division argues that it need not have responded to the demand at all, since as a general rule a party need particularize only that of which he has the burden of proof (see, Holland v. St. Paul Fire & Marine Ins. Co., 101 AD2d 625, 475 NYS2d 156, 157). The Division and petitioners look to the CPLR and cases decided under the authority of the CPLR to support their respective positions. I decline to adopt this approach. Section 3000.5(a)(6), which governs motion practice in the Division of Tax Appeals, provides:

"The appropriate sections of the CPLR regarding motions, where not in conflict with this Part, are applicable to the motion being made".

The motion made here is brought under section 3000.6 which specifically provides not only for bills of particulars, but also for motions for preclusion made in connection with the demand for

a bill. Section 3000.6 does not make reference to the CPLR as does section 3000.5. As a consequence, I conclude that section 3000.5(a)(6) does not apply to section 3000.6.

Furthermore, if it were intended that the CPLR be deemed generally applicable to the Tax Appeals Tribunal Rules of Practice and Procedure, section 3000.0(c) would certainly have stated so, and it does not. Finally, construction of the language of the Tax Appeals Tribunal rules of practice in such a manner as to conform those rules to the CPLR in every instance would defeat the stated purpose of the Tax Appeals Tribunal which is to provide a rapid and inexpensive, as well as just, system of resolving controversies between taxpayers and the Division of Taxation (20 NYCRR 3000.0).

Accordingly, I find that the Division may be required to furnish a bill of particulars on all matters which it is required to plead, whether or not it bears the ultimate burden of proof at hearing. However, I find that the bill of particulars furnished to petitioners was adequate in all respects.

The Division responded to the best of its ability to each of petitioners' demands. The answer, together with the bill of particulars, adequately informs petitioners of the Division's defense to the petition and the material facts relied on by the Division to arrive at the determination of tax due, and the Division informed petitioners of the documentary source of the facts pleaded to the extent that it was able to do so.

F. Due process and fairness require that the Division of Taxation fully and completely advise taxpayers of the basis of a determination of a tax deficiency, because the taxpayer cannot be expected to carry her burden to overcome an assessment if she does not know the basis for the assessment (cf., Matter of Vincent Basileo, Tax Appeals Tribunal, May 9, 1991). There are several formal and informal avenues by which the Division is able to so advise the taxpayer. In this case, for instance, there was a series of exchanges between the Division and petitioners. The Division explained its position in the Statement of Proposed Audit Changes. After receipt of further information from petitioners, the Division affirmed its original determination and provided petitioners with a further explanation of its position (see Mr. Ferriolo's letter of July

21, 1988). After the issuance of a notice of determination, petitioners participated in a conciliation conference which afforded both parties the opportunity to air issues, seek clarification of facts and law, and exchange relevant documents. The Division properly served petitioners with an answer to the petition and a bill of particulars, both of which have been found to be adequate for the purpose of advising petitioners of the Division's defense to the petition. Finally, the Division's attorney met with petitioners' representative and explained the basis for its positions and showed him the documents relied on by the Division to support its position. In light of the Division's efforts to completely inform petitioners of its defense to the petition, the motion for preclusion is found to be without merit.

G. Petitioners seek an order of discovery on the ground that production of the documents is necessary in order for petitioners to fairly and adequately prepare their case. 20 NYCRR 3000.5(a) allows a party to move for an order, provided that the motion is for an order appropriate under the Tax Law and the CPLR. It makes specific exception for "motions related to discovery procedures as provided for in the CPLR"; however, for "good cause shown" a form of discovery by order may be granted (id.). It is the Division's position that petitioners have not shown good cause and, therefore, are not entitled to such an order.<sup>2</sup> The Division also claims that, since the documents sought were initially submitted to the Division by petitioners, they ought to have their own copies of the documents they now seek to discover.

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<sup>2</sup>The Division claims that the Tax Appeals Tribunal rules of practice were intended to continue the former State Tax Commission's policy of utilizing the pre-hearing conference to provide a substitute for discovery procedures (20 NYCRR former 601.10[a] provided: "The pre-hearing conference [See §601.4, *supra.*] is intended to provide a substitute for discovery procedures. However, in those instances where a pre-hearing conference is not conducted, or for other good cause, the Commission may grant a form of discovery by order"). The Tax Appeals Tribunal might have adopted this policy if it wished; however, the language of section 3000.5(a) clearly establishes that it did not. The Tribunal's failure to adopt the reference to pre-hearing conferences indicates that conciliation conferences are not to be considered a formal substitute for discovery, although they may offer an informal means for the parties to exchange documents and information.

Parties to proceedings before the Division of Tax Appeals are encouraged to pursue informal procedures before seeking an order for discovery (see, Matter of Rally Oil Company, Tax Appeals Tribunal, January 17, 1991). It is apparent that the parties to this proceeding have not been able to resolve their differences by such means. Denial of a discovery order would serve no purpose except to ensure that the hearing in this matter will be confused and contentious. Accordingly, the Division is directed to make the following documents available at its offices for inspection and copying by petitioners:

1. Copies of all New York State corporation franchise tax reports filed by either Dentrac or Scott for the years 1981 through 1987, with attached riders, statements of intent to dissolve, corporate minutes or corporate resolutions.
2. Copies of Federal corporation tax returns filed by Dentrac or Scott for the years 1971 through 1978.
3. Copies of State and Federal personal income tax returns filed by Edward and Jean A. Meixsell for the years 1985 through 1988.
4. Copies of contracts for the sale of the two parcels of land which are the subject of this proceeding, including but not limited to contracts between one or both petitioners and Seventh Street Associates, Inc. and Lake Avenue Associates.
5. Copies of all transferor and transferee questionnaires filed by petitioners and/or Seventh Street Associates and/or Lake Avenue Associates in connection with the transfer of the parcels of land which are the subject of this proceeding.
6. Copies of all affidavits, documents or correspondence submitted to the Division by petitioners in compliance with Tax Law § 1447.

The Division shall make the above documents available to petitioners within 15 days of the date of this order. Petitioners will have 15 days thereafter to inspect and copy such documents.

H. Petitioners' motion for a preclusion order is denied.

The Division's motion to file an amended petition is denied.

Petitioners' motion for an order of discovery is granted to the extent indicated above and, otherwise, is denied.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE